

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:)	
)	
TIMOTHY R. BELL, an)	
individual, et al,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 2:11-CV-271BSJ
)	
COUNTRYWIDE BANK NA, et)	
al,)	
)	
Defendants.)	
)	
_____)	

BEFORE THE HONORABLE BRUCE S. JENKINS

January 15, 2013

Motion Hearing

Laura W. Robinson, RPR, FCRR, CSR, CP
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144 U.S. Courthouse
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1 **Salt Lake City, Utah, January 15, 2013**

2 *** * * * ***

3 THE COURT: Good afternoon, and why don't we turn to
4 Bell and others versus Countrywide and others, it is
5 11-C-271, here today to consider plaintiffs' motion to
6 dismiss and a purported stipulated dismissal relating to
7 other parties. And those who are making appearances, if you
8 will be kind enough to make a record for us, tell us who you
9 are and whom you represent.

10 MR. BATES: Abraham Bates on behalf of the plaintiffs
11 Timothy and Jennifer Bell.

12 MR. ROBERTS: Thom Roberts and Mr. Wade Faraway from
13 the Utah Attorney General's Office on behalf of the State of
14 Utah.

15 THE COURT: Okay.

16 MS. MILLER: Amy Miller on behalf of defendants.

17 THE COURT: Okay.

18 MR. PUMPHREY: Brian Pumphrey on behalf of defendants.

19 MR. DRACHT: Philip Dracht on behalf of the
20 defendants.

21 THE COURT: Okay. Why don't we take the state matter
22 up first, Mr. Roberts. I know that you're sort of new at
23 this point we have had Mr. Jensen here before, but I don't
24 think I have ever physically had Mr. Shurtleff here before
25 on this matter, but I am as much curious as anything else as

1 to the position of the state to begin with and what may be
2 the position of the state now.

3 MR. ROBERTS: Thank you, Your Honor. Thom Roberts on
4 behalf of the State of Utah. As Your Honor is aware,
5 Mr. Shurtleff was the Attorney General of the State of Utah,
6 and we just had a change in administration to Mr. Swallow
7 who is currently the Attorney General. But while
8 Mr. Shurtleff was the Attorney General, he did file and he
9 did sign and there has been filed a notice of dismissal
10 under Rule 41(a)(1) with regard to dismissing all of the
11 claims of all of the parties.

12 Mr. Shurtleff has I believe indicated in other places
13 like in the newspaper, has indicated that this was an
14 appropriate response with regard to dismissing this
15 particular case. Your Honor has issued a ruling in this
16 case upholding the state's position that ReconTrust does not
17 have legal authority to conduct nonjudicial foreclosure
18 sales within the State of Utah. That has been and continues
19 to be the State of Utah's position with regard to the
20 interpretation of National Banking Act, questions whether or
21 not we should be proceeding with regard to this particular
22 case. Mr. Shurtleff decided that our efforts would be best
23 spent with regard to enforcing other cases.

24 As Your Honor is probably aware, although possibly
25 not, the Attorney General's office has been involved in five

1 cases actively with regard to this issue of the authority of
2 ReconTrust. We are participating and have been
3 participating in all five of those cases. One of them is
4 entitled Sunquist versus Federal National Mortgage
5 Association, which is pending in the Utah Supreme Court.
6 The Attorney General Office filed an amicus brief in that
7 case. There are two cases pending in the Tenth Circuit
8 raising this identical issue with regard to the authority of
9 ReconTrust. We have filed amicus briefs in both of those
10 cases. Yesterday there was oral argument heard on the
11 Garrett versus ReconTrust case. The State of Utah -- I have
12 requested the ability to be able to argue in that case. The
13 Tenth Circuit panel decided not, they didn't want to hear
14 from me, declined to have the state participate in that
15 case.

16 This stipulation for dismissal I think was filed on
17 the 28th of December. On January 3rd of this year, I filed
18 the amicus brief in the Deutscher versus ReconTrust case in
19 the Tenth Circuit. Both of those cases have cited and
20 relied to Your Honor's decision in this case which we think
21 is correct. We probably wish that your case had gone first,
22 and it was your case up there in the Tenth Circuit with
23 regard to this matter, but unfortunately that has not turned
24 out to be the case.

25 We fully anticipate the Tenth Circuit to rule

1 hopefully this year in either the Garrett or the Deutscher
2 case with regard to this issue, and everyone has cited to,
3 argued from your case, your decision was mentioned yesterday
4 in oral argument, so we're hoping to have that decision
5 happen.

6 Chances are that the Tenth Circuit will end up ruling
7 on that issue before we could get this case through to final
8 judgment, appealed, and up before the Tenth Circuit. So
9 Mr. Shurtleff made the determination that our efforts ought
10 to be set and spent at those appellate levels with regard to
11 those cases rather than continuing in this case where there
12 might be other issues of litigation proceeding with regard
13 to this matter. Because there have been --

14 THE COURT: So you're an amicus in other cases?

15 MR. ROBERTS: Yes, we have filed amicus cases in both

16 --

17 THE COURT: You're a party in this case?

18 MR. ROBERTS: We are a party in this case. In the
19 Deutscher case we had requested to intervene as a party.
20 The lower court denied that. And yes we are a party here,
21 we are an amicus there. We have -- we are -- we did seek --

22 THE COURT: Well, what is the -- what is the position
23 of the State of Utah now?

24 MR. ROBERTS: The position is with regard to
25 ReconTrust?

1 THE COURT: No, in regard to this case?

2 MR. ROBERTS: The decision was made that this case
3 should -- Attorney General Shurtleff signed a document
4 stipulating to the dismissal of this case so it is the
5 position that dismissal was appropriate.

6 THE COURT: Mr. Jensen a few months ago was here
7 arguing very intensively about the propriety and
8 desirability of being intervenor in this particular matter.
9 Apparently the state has changed its mind.

10 MR. ROBERTS: Um, yes, Your Honor. The state did
11 change its mind. There were some concerns -- the short
12 answer is yes, Your Honor.

13 THE COURT: Okay. But the position today is
14 different, as mild as I can put it, than it was when the
15 petition was filed to intervene?

16 MR. ROBERTS: That is correct, Your Honor. It is my
17 understanding that that was back, I believe, in the spring,
18 and there were some possibly some hopes and concerns with
19 regards to moving these cases forward. The Attorney General
20 made the determination based upon the two pending cases in
21 the Tenth Circuit that that would be the appropriate way to
22 go. Not everyone might have come to that conclusion or held
23 that to be the most appropriate course. Mr. Shurtleff did,
24 however.

25 THE COURT: Okay. Well, I appreciate that. I am a

1 believer in cases being resolved appropriately. Thank you.

2 MR. ROBERTS: Thank you.

3 MR. BATES: Your Honor?

4 THE COURT: And Mr. Bates, I am interested in your
5 pending motion.

6 MR. BATES: Your Honor, I would first like to address,
7 assuming the court is familiar with the characterization or
8 reasoning set forth for Mr. Shurtleff's exercise of his
9 prerogative while he was in office.

10 THE COURT: He didn't state any reason.

11 MR. BATES: What is that?

12 THE COURT: He didn't state any reason.

13 MR. BATES: Well he did actually. And the stated
14 reason was that he didn't believe that it would be a wise
15 use of the state's resources.

16 THE COURT: No. No. No. In the notice that was
17 filed with this court, there was no reason.

18 MR. BATES: Understood. But on the public record and
19 therefore I would argue subject to judicial notice, he
20 claimed that he attached his signature to the 41(a)(1)
21 motion without consultation with counsel of record because
22 it would not be a wise use of the state's resources.

23 THE COURT: Yeah, well I --

24 MR. BATES: And I firmly disagree with that position
25 given the state's previous position in this case, and I also

1 respectfully didn't disagree with Mr. Roberts' position.

2 And once again, I am lending my comments as to the state's
3 claims as to my --

4 THE COURT: I am really more interested in your motion
5 that you filed on the 17th of December, if I remember
6 correctly, and the relief that you asked for in that motion.

7 MR. BATES: Right. So the pending motion, the
8 41(a)(2) motion was filed by me but was done in consultation
9 and was reviewed by defendants in addition to communications
10 with the Office of the Attorney General to confirm that they
11 would not object to such motion. That motion required an
12 order of this court in order to dismiss the claims based on
13 terms that are proper potentially subjecting the settlement
14 to judicial review.

15 While that motion is technically still pending, the
16 41(a)(1) motion which bears both my signature and
17 Mr. Shurtleff's and defendants --

18 THE COURT: I don't have your signature.

19 MR. BATES: I believe my digital signature was
20 attached.

21 THE COURT: No, I don't have your signature. That was
22 not signed by you. But let's deal with your December 17th
23 motion.

24 MR. BATES: Okay. Let me make clear. I am duty bound
25 by the settlement agreement to effectuate the dismissal of

1 my clients' claims which initially, pursuant to defendant's
2 proposal, was to be done by a 41(a) stipulation until the
3 State of Utah by written correspondence to both parties
4 refused to execute the 41(a)(1) voluntary stipulated
5 dismissal precisely because they were not a party to the
6 settlement and because at that point in time their position
7 was we continue, we are --

8 THE COURT: Well, you tell me that in your petition.

9 MR. BATES: Right. Right. Therefore, the motion
10 was -- I drafted a 41(a)(2) motion, provided it to counsel
11 for defendants for review, provided a courtesy copy to the
12 state and thereby filed it.

13 THE COURT: Well you asked for certain relief.

14 MR. BATES: Well, my understanding of the Rules of
15 Civil Procedure, and I am happy for the court to correct my
16 understanding is that the 41(a)(1) notice effectively trumps
17 that -- the prior motion. And to any extent that the two
18 motions interfere with each other, I am bound pursuant to
19 settlement agreement to head off any such conflict by here
20 today in open court orally withdrawing the 41(a)(2) motion.

21 THE COURT: Yeah, let me just ask you a question or
22 two on the motion that is filed.

23 MR. BATES: Yes.

24 THE COURT: Among other things in the order that was
25 submitted by you, you said seeking dismissal.

1 MR. BATES: Correct.

2 THE COURT: I am in favor of dismissal. It sounds to
3 me like you ended up with a pretty good deal. That is fine.
4 The fourth section of the proposed order says this action
5 shall be re-captioned State of Utah versus ReconTrust
6 Company NA. Where did that come from?

7 MR. BATES: As I think defendants will acknowledge,
8 that was based on their edits and was not included in my
9 original proposed language. The state responded that it
10 felt the court was highly unlikely to re-caption the matter
11 as such, but certainly communicated to me that the
12 defendants and the state continued -- had a present intent
13 to continue.

14 THE COURT: Then you say all existing deadlines shall
15 remain in force as to the State of Utah and ReconTrust.

16 MR. BATES: Right. Correct.

17 THE COURT: That was the fifth relief that you asked
18 for.

19 MR. BATES: Correct.

20 THE COURT: Now, your motion was never withdrawn.

21 MR. BATES: It has not been formally withdrawn yet,
22 no, Your Honor.

23 THE COURT: Now, there was a purported notice signed
24 by some of the parties. That particular notice was not
25 physically signed by you.

1 MR. BATES: Correct.

2 THE COURT: And that particular notice was not signed
3 by local counsel on your behalf.

4 MR. BATES: I do not have --

5 THE COURT: Have you ever seen that?

6 MR. BATES: Are you referring to Mr. Dracht?

7 THE COURT: Have you ever seen that?

8 MR. BATES: I have seen it, and there were a number of
9 e-mail exchanges.

10 THE COURT: No, I'm talking to you.

11 MR. BATES: Okay.

12 THE COURT: Have you seen it?

13 MR. BATES: I may not have seen the document that the
14 court is specifically referring to right now.

15 THE COURT: Okay. Well let me hand it down to you,
16 the one that I have seen.

17 MR. BATES: I have seen this document.

18 THE COURT: Now your signature, your physical
19 signature, does not appear thereon.

20 MR. BATES: That is correct.

21 THE COURT: And Mr. Dracht's signature on your behalf,
22 his signature, doesn't appear thereon.

23 MR. BATES: No. But there is the astrict indication.

24 THE COURT: You're interested in settling this case.

25 MR. BATES: I am bound to dismiss my clients.

1 THE COURT: You're interested in settling this case.

2 MR. BATES: Yes. Well --

3 THE COURT: You want to settle the case.

4 MR. BATES: I would dispute that characterization
5 because there are plaintiffs' claims and there are the
6 state's claims. I am co-counsel in other matters.

7 THE COURT: No, on behalf of Bell --

8 MR. BATES: Yes.

9 THE COURT: -- you want to settle this case.

10 MR. BATES: As it relates to my clients, yes.

11 THE COURT: You're happy with your settlement of this
12 case?

13 MR. BATES: Yes. My clients are happy with the
14 settlement terms, yes.

15 THE COURT: Okay. And you would like the court to
16 approve the settlement?

17 MR. BATES: Well, that was the proposal in the motion
18 that was initially filed subjecting the settlement
19 potentially to judicial review.

20 THE COURT: Well, it is subject to judicial review for
21 many reasons, and we'll go into those in a minute, but
22 you're happy with it?

23 MR. BATES: My clients are satisfied with it, yes.

24 THE COURT: Okay. That's fine. That's fine. And
25 that is all I have as far as you're concerned.

1 MR. BATES: Okay.

2 THE COURT: You can give me back my copy.

3 MR. BATES: If I may make one more comment. I have no
4 authority to speak on behalf of or bind the Office of the
5 Attorney General.

6 THE COURT: I recognize that.

7 MR. BATES: But I have had communications with
8 Mr. Swallow indicating that his administration intends to
9 fully prosecute claims like these.

10 THE COURT: Well, let them speak for themselves.

11 MR. BATES: And that he would have never executed this
12 dismissal.

13 THE COURT: Let them speak for themselves.

14 Now I'm interested in the defendants. Counsel
15 suggests that it was your suggestion to change the title of
16 the case in his initial motion. And I am curious as to the
17 authority for something like that.

18 MR. PUMPHREY: Your Honor, Brian Pumphrey. The
19 initial plan was when the Utah AG's Office indicated that
20 they wanted to proceed with litigation, we had proposed
21 initially a stipulation of dismissal that at that time would
22 have only resolved the claims between the defendants and the
23 Bells. The Utah AG's Office declined to sign off on that
24 because they thought it could some how impact their case
25 which at the time they were fully planing on proceeding. So

1 when we were preparing the Rule 41 motion which I understand
2 Mr. Bell -- Mr. Bates intends to withdraw --

3 THE COURT: Has he withdrawn it?

4 MR. PUMPHREY: He has withdrawn it.

5 THE COURT: It is here.

6 MR. PUMPHREY: So that has been withdrawn. I think it
7 was more of a housekeeping issue that we thought that at
8 that time we were under the impression that the case was
9 going to be going forward, we were engaging in discovery, we
10 were having meet and confers.

11 THE COURT: Well, why change the title?

12 MR. PUMPHREY: Because the Bells were no longer in the
13 case.

14 THE COURT: How can you repeal history?

15 MR. PUMPHREY: I have had many cases where when
16 parties have left where the title has changed. It certainly
17 is not something that we thought was absolutely critical,
18 but we thought it would be cleaner because that is what --
19 it would reflect the parties who would actually be in the
20 case.

21 THE COURT: Well apparently Mr. Shurtleff had a change
22 of mind.

23 MR. PUMPHREY: That is my understanding.

24 THE COURT: Well, did you talk to him?

25 MR. PUMPHREY: Personally I did not, no.

1 THE COURT: Who talked to him?

2 MR. PUMPHREY: One of my partners.

3 THE COURT: Whose name is?

4 MR. PUMPHREY: Jerry Kilgore.

5 THE COURT: Is he around?

6 MR. PUMPHREY: He is not here today, no.

7 THE COURT: Okay. And so local counsel didn't talk to
8 him?

9 MR. PUMPHREY: To Mr. Shurtleff?

10 THE COURT: I'm sorry?

11 MR. PUMPHREY: So you're saying did Mr. Dracht speak
12 with Mr. Shurtleff?

13 THE COURT: Well, he wasn't the one that talked to
14 Shurtleff.

15 MR. PUMPHREY: No, no, Mr. Kilgore spoke to
16 Mr. Shurtleff. Mr. Shurtleff called Mr. Kilgore. My
17 understanding is, again I was not on the call, my
18 understanding is that Mr. Shurtleff called Mr. Kilgore on or
19 about December 19th and stated that he had decided that he
20 was going to dismiss the case.

21 THE COURT: Okay. Now, as I understand it, Mr. Bates
22 on behalf of the Bells needs to sign the so-called notice of
23 dismissal. Now the sign, in quotation marks, is a term of
24 art which is governed by national and local rules. The form
25 in which the notice was signed doesn't comply with the

1 national but particularly the local rule. And as a result,
2 I have a notice, or a so-called stipulation, that purports
3 to be signed by Mr. Bates, but according to the rule hasn't
4 been signed by Mr. Bates. And I'll refer counsel to the
5 administrative procedures that exist so-called having to do
6 with the electronic filing and merely point out that the
7 deficiency in dealing with an added electronic signature,
8 so-called with authority, has to bear the signature of the
9 signing attorney. That is to say the one who is submitting
10 the document.

11 Absent that signature, the notice is deficient and
12 incomplete. But Mr. Bates has told me in open court here,
13 and I'll have him reiterate it, that he would like to join,
14 as I understand it, in a stipulation of dismissal. Let me
15 ask him again. Is that correct, Mr. Bates?

16 MR. BATES: Yes, Your Honor. The settlement agreement
17 requires me, whether it is under 41(a)(2) or 41(a)(1), to
18 agree to dismiss my clients' claims.

19 THE COURT: Well, I want to try to repair, if
20 possible, the difficulty I had with the notice. And I think
21 that with your statement on the record, and your
22 satisfaction and the satisfaction of your client with what
23 appeared to be a reasonable settlement under the
24 circumstances, the kind of settlement that might possibly be
25 a pattern for people down the road, and your acknowledgment

1 in open court and on the record the existence of the
2 agreement on your part to agree to the dismissal of all of
3 the pending actions.

4 MR. BATES: Your Honor, if it would please the court,
5 I would be happy here today in open court to attach my
6 physical signature --

7 THE COURT: No, I think the record is satisfactory.

8 MR. BATES: -- in open court.

9 THE COURT: I think the record is satisfactory. But I
10 do think that we need to memorialize that and why don't we
11 have you earn your fee by preparing a modest order
12 memorializing the fact and stating in your motion that you
13 agree to this stipulation to dismiss everything.

14 MR. BATES: Your Honor, the state has reminded me that
15 I would not be able to attach my signature to a
16 contemporaneous as of dated today motion given the present
17 administration's contrary intentions to Mr. Shurtleff's. I
18 would be happy to attach my signature to the form of the
19 dismissal that included Mr. Shurtleff's signature when --

20 THE COURT: Well, you can file a duplicate copy of
21 that notice with your signature.

22 MR. BATES: I will do so.

23 THE COURT: You can get a photostatic of that from the
24 clerk, or downstairs from the clerk, or off your own
25 computer.

1 MR. BATES: Understood.

2 THE COURT: And file that with the court. And I will
3 find that to be sufficient based upon your representations
4 here in open court and on the record.

5 MR. ROBERTS: Your Honor, Thom Roberts on behalf of
6 the State of Utah. Based upon the concern which I was
7 frankly was unaware of with regard to the finality of that
8 stipulated dismissal, as I indicated, there has been a
9 change in administration. Mr. Shurtleff no longer has the
10 authority to bind the office and so if that --

11 THE COURT: I'm not asking him to.

12 MR. ROBERTS: So but his -- but if this -- his
13 signature now he does not have the authority to sign on
14 behalf of the Attorney General's Office.

15 THE COURT: He is not asking that you sign it again.

16 MR. ROBERTS: No, but the issue is whether or not --
17 if Your Honor deems it appropriate to accept his signature
18 that he made while he was attorney general and give it
19 effect after he is no longer --

20 THE COURT: I have got his signature on the defective
21 notice. The defective notice lacked his signature. It is
22 his signature that I am --

23 MR. BATES: Your Honor, those documents are one in the
24 same.

25 THE COURT: I'm sorry?

1 MR. BATES: The document containing Mr. Shurtleff's
2 signature, is the same document containing what the court
3 has identified as my defective electronic signature.

4 THE COURT: And it is -- I understand what you're
5 saying, but we'll let Mr. Bates physically sign a duplicate
6 copy and file it with the court.

7 MR. ROBERTS: I was just raising for Your Honor the
8 question about, you know, to the extent that this purports
9 to be effective --

10 THE COURT: What does the State of Utah want to do?

11 MR. ROBERTS: The State of Utah made a decision under
12 Mark Shurtleff's administration to dismiss that.

13 THE COURT: Okay. Are you changing that decision?

14 MR. ROBERTS: It had been our position that this was
15 complete as of the time that it was filed.

16 THE COURT: It wasn't completed at the time that you
17 filed it because it lacked a lawful signature of Mr. Bates.

18 MR. ROBERTS: And to the extent that was not effective
19 when it was filed, a new filing would require a signature
20 and Mr. Shurtleff no longer has the authority to --

21 THE COURT: I merely indicated that Bates has
22 indicated here in open court and on the record that he
23 acknowledges that he agrees to that.

24 MR. ROBERTS: To the extent that the court wants to
25 accept this pleading as being a contemporaneous pleading

1 today, or when Mr. Bates signs it with Mr. Shurtleff's
2 signature he is no longer the Attorney General and so I
3 question whether or not he has the authority today to sign a
4 stipulation for a dismissal.

5 THE COURT: Well, I'm not dealing with that. I am not
6 dealing with his authority today. I thought the position of
7 the State of Utah was as you stated.

8 MR. ROBERTS: The position of the State of Utah was
9 that this case was dismissed on the 28th.

10 THE COURT: Is that still your position?

11 MR. ROBERTS: It was our understanding that everyone
12 had signed it, Your Honor, and this is new information to me
13 so I only know what I know.

14 MR. BATES: Your Honor, if I may, I just want to make
15 clear that at no point have I stipulated or do I agree to a
16 global dismissal as contained and represented in the 41(a)
17 notice. I agreed to attach my electronic signature to that
18 document for the narrow purpose of dismissing my clients'
19 claims and not the entire case in general even though once
20 again I have no standing, it was not my intention, and to
21 characterize my position as I approve of the practical
22 effect of the entire, you know, document and the dismissal
23 of all parties claims with prejudice that is inaccurate. I
24 agreed to execute the document because at defendants'
25 request it effectuated the dismissal of my clients' claims

1 narrowly as part of the settlement.

2 THE COURT: Well, I'm in doubt as to what you want me
3 to do. I thought we had resolved it.

4 MR. DRACHT: Your Honor, may I?

5 THE COURT: Sure.

6 MR. DRACHT: There has been some discussion about
7 filing and e-filing. Your Honor has characterized
8 Mr. Bates' filing as -- or signature as somehow not
9 sufficient.

10 THE COURT: That is correct.

11 MR. DRACHT: And in looking at Page 3 of the
12 stipulated motion, the first signature block says by counsel
13 and it indicates a slash S. I can wait for Your Honor to
14 pull up the motion.

15 THE COURT: No, you go ahead.

16 MR. DRACHT: Slash S Abraham Bates.

17 THE COURT: I saw that.

18 MR. DRACHT: And there are two asterixes and below
19 that it says, filing counsel has received Mr. Bates consent
20 to upload this motion and his signature electronically.

21 THE COURT: Absolutely true.

22 MR. DRACHT: And I have an e-mail from Mr. Bates
23 saying please upload this document and sign on by behalf.

24 THE COURT: That is fine.

25 MR. DRACHT: Under the administrative procedures for

1 this court, subsection -- or Roman Numeral two section A
2 number two, signatures of other attorneys provides for when
3 a document to be filed requires a signature of attorneys
4 other than that of a filing attorney, such as a stipulation,
5 the attorney may obtain approval from the other attorneys to
6 state that the other attorney has authorized the filing
7 attorney to electronically sign the document.

8 THE COURT: I don't have any trouble with that.

9 MR. DRACHT: And it appears that that is what happened
10 here.

11 THE COURT: No. No. What is lacking, counselor, is
12 you didn't sign it. Read the next section.

13 MR. DRACHT: Well, I certainly signed the stipulation.
14 I didn't sign below Mr. Bates signature.

15 THE COURT: That is correct, you didn't sign that.

16 MR. DRACHT: And Your Honor, we have submitted a
17 number of stipulations in this court under the same
18 manner --

19 THE COURT: I am just pointing out --

20 MR. DRACHT: -- and Your Honor has not ever indicated
21 that this is an issue.

22 THE COURT: There it is. You live with it. I live
23 with it. That is not my problem, that is your problem.

24 MR. DRACHT: Okay. All right. Well, Mr. Bates has
25 already consented and has signed the document.

1 THE COURT: He has indicated that he is happy with the
2 results of --

3 MR. DRACHT: Your Honor, so here we are.

4 THE COURT: That is fine. He has indicated that he
5 has joined in as far as I'm concerned. Maybe I should have
6 assigned you the onerous task of sending me a small order.

7 MR. DRACHT: I certainly would take that -- if you
8 assign me that task, we will present an order to the court.

9 THE COURT: That would be fine. And I simply want to
10 say something in passing of no great consequence. In
11 litigation in the courtroom, whether you're the Attorney
12 General of the State of Utah or of the United States or
13 anyone else who practices here, we expect directness,
14 candor, laying it out for the court, so that everybody knows
15 what everybody has got, and everybody knows the reasons why.
16 That is the only way any of us can function whether you're
17 an officer of the court or whether you're a judge. That is
18 the only way it really works. Candor and
19 straightforwardness and recognition on occasion that there
20 may be a conflict or at least the appearance of one, and
21 that one should be as careful in those kinds of situations
22 as one can possibly be. But I have delayed these other
23 fellows and ladies on another matter. I would appreciate it
24 if you would send me a modest order. Thank you very much.

25 MR. DRACHT: Thank you.

1 THE COURT: We're going to take a two minute break and
2 let people set up and go from there.

3 MR. BATES: May I make one final comment? No.

4 (Whereupon, the hearing concluded at 2:09 p.m.)
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STATE OF UTAH)

) SS

COUNTY OF SALT LAKE)

I, Laura W. Robinson, Certified Shorthand
Reporter, Registered Professional Reporter and Notary Public
within and for the County of Salt Lake, State of Utah, do
hereby certify:

That the foregoing proceedings were taken before me at the time and place set forth herein and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

In witness whereof I have subscribed my name and
affixed my seal this 12th day of December, 2013.

S/ Laura W. Robinson

Laura W. Robinson

RPR, FCRR, CSR, CP